

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:

Aurrichio et al.

Atty. Docket No.: YOR920010210US1

Serial No.: 09/918,107

Group Art Unit: 2781

Filed: July 25, 2002

Examiner: Choi, Peter H.

For: **PERFORMANCE INDICATOR AND NOTIFICATION SYSTEM**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ATTACHMENT TO PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

This pre-appeal brief request is being submitted together with a notice of appeal and is in response to the Office Action mailed April 11, 2007, setting a three-month statutory period for response. Therefore, this request is timely filed.

Claims 1-6, 9-13, 15-17, 19-24, 28-32, 34, 36, 38-43, 46-50, 52, and 54 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Beldock (U.S. Patent No. 6,490,565). Claims 7, 18, 25, 37, 44, and 55 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Beldock, in view of Petke, et al. (U.S. Patent No. 6,163,732), hereinafter referred to as Petke. Claims 8, 26, and 45 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Beldock, in view of Barrett, et al. (U.S. Patent No. 6,029,144), hereinafter referred to as Barrett. Claims 14, 33, and 51 stand rejected under

35 U.S.C. §103(a) as being unpatentable over Beldock, in view of Smalley, et al. (U.S. Patent No. 6,067,549), hereinafter referred to as Smalley.

Applicants respectfully traverse these rejections because the rejections contain two clear errors. First, the references miss the claim element of modifying performance immediately subsequent to the notification so that the modifying occurs in real time. Secondly, the references miss the claim element of setting the performance criteria to different levels (e.g., global, regional, or site-specific).

A. Missing Claim Element – modifying performance immediately subsequent to the notification so that the modifying occurs in real time.

Applicants submit that the prior art of record misses the claimed element “wherein said modifying said performance is conducted immediately subsequent to said providing notification when said performance information deviates from said performance criteria so that said modifying of said performance occurs in real time” as defined by independent claims 1, 19, and 38. Moreover, Applicants submit that Beldock teaches against the claimed feature wherein the modifying of the performance is conducted *immediately subsequent* to the providing of the notification so that the modifying of the performance occurs in *real time*. More specifically, as acknowledged by the Office Action, Beldock teaches that participants are given “a short period of time” in which to correct any inadvertent defects in its compliance (Office Action, p. 10, para. 2).

As described in paragraph 0010 of Applicants’ disclosure, the performance indicator and notification system (PINS) provides a mechanism for assessing

environmental performance on a real-time basis and allowing immediate notification to corporate staff or other environmental professionals when performance data deviates from the established criteria. As further described in paragraph 0042 of Applicants' disclosure, PINS provides real-time analysis of performance data, as opposed to a retrospective view on performance passed the elapsed measurement period so that comprehensive company-wide monitoring of performance is accomplished in a manner such that data entered in a single site is accessible, in real-time, at other sites to perform thresholding on limits set at multiple sites, all sites, or just the local site. PINS makes the entire process of performance tracking against criteria systematic, timely and efficient; and turns lagging indicators into leading indicators by way of providing real-time performance feedback.

Applicants respectfully submit that giving participants a *short period of time* to correct defects teaches away from modifying performance *immediately subsequent* to notification of such defects so that the modifying occurs in *real time*. In other words, if action B is performed a short period of time after action A, then the “short period of time” is intermediate action A and action B, such that action B is not performed *immediately subsequent* to action A.

The Examiner argues that “the performance modification occurs immediately after the notification in the Beldock system” (Advisory Action, p. 2, para. 3). However, the Examiner does not provide any support within Beldock to maintain this assertion. Instead, the Examiner acknowledges that Beldock discloses that a “short period of time” is given to correct defects in compliance (Advisory Action, p. 2, para. 3).

Accordingly, Applicants submit that Beldock teaches away from modifying performance immediately subsequent to the notification so that the modifying occurs in real time. Instead, Beldock discloses that participants are given a short period of time in which to correct any inadvertent defects in its compliance. Therefore, it is Applicants' position that Beldock teaches away from the claimed feature "wherein said modifying said performance is conducted immediately subsequent to said providing notification when said performance information deviates from said performance criteria so that said modifying of said performance occurs in real time" as defined by independent claims 1, 19, and 38.

B. Missing Claim Element – setting the performance criteria to different levels (e.g., global, regional, or site-specific).

Applicants submit that the prior art of record misses the claimed element "wherein said performance criteria is set at one of a global, a regional, and a site-specific level" as defined by independent claims 1, 19, and 38. Moreover, Applicants submit that Beldock teaches against setting performance criteria to a global, a regional, or a site-specific level.

As described in the abstract and column 6, lines 10-19 of Beldock, the data processing method for an environmental certification program provides *uniform criteria* for participants in the program. As such, the certification mark provided by the program to a complying participant has discernable value in the marketplace. In addition, the continued display of the certification mark by a participant on its goods and in its

advertising signifies the participant's dedication to environmental concerns and the willingness of the participant to act to be a model environmental citizen.

Conversely, as discussed in paragraph 0035 of Applicants' disclosure, performance data criteria may be set at a global, regional or site level. This flexible system for setting performance levels allows for site-specific criteria to be set for a facility while corporate-wide criteria to be set for goals affecting all or some locations.

Accordingly, Applicants submit that Beldock teaches setting *uniform* performance criteria; and as such, Beldock teaches against setting the performance criteria to different levels (e.g., global, regional, or site-specific). If the performance criteria of Beldock are *uniformly* set, then the performance criteria cannot be set to different levels (e.g., global, regional, or site-specific). Therefore, it is Applicants' position that Beldock teaches away from the claimed feature "wherein said performance criteria is set at one of a global, a regional, and a site-specific level" as defined by independent claims 1, 19, and 38.

Please charge any deficiencies and credit any overpayments to Attorney's Deposit Account Number 50-0510.

Respectfully submitted,

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